

GOVERNMENT OF ANDHRA PRADESH
A B S T R A C T

Tribal Welfare – Adilabad District – Revision Petition filed by Sri Kemi Raja Reddy S/o Ashanna under Sec.6 of A.P.S.A.L.T.R,1959 against the orders of the Addl. Agent to Govt. and Project Officer ITDA, Utnoor, in Proceedings No.A4/5/1997, dated 29-7-2006 – Allowed – Orders – Issued.

SOCIAL WELFARE (LTR - 2) DEPARTMENT

G.O.Ms.No. 59

Dated:06-06-2009

Read the following:-

- 1.From Sri Kemi Raja Reddy S/o Ashanna , Adilabad Dist.,
Revision Petition Dt: 20/09/2006
- 2.Govt.Memo.No.12034/LTR-2/2006-1, Dt:10-10-2006.
- 3.From the Project Officer ITDA, Utnoor, Adilabad,Lr.No.A4/05/1997.
Dt:23/11/2006
- 4.Govt.Memo.No.12034/LTR-2/2006, Dt:14-8-2008 & 22-12-08.

ORDER:

In the reference first read above, Sri Kemi Raja Reddy S/o Ashanna and two others R/o Mamidiguda Village, Adilabad District have filed Revision Petition before the Government under Sec.6 of A.P.S.A.L.T.R,1959 against the orders of Project Officer ITDA, Utnoor, in Proceedings No.A4/5/1997, dated 29-7-2006 in respect of lands in Sy.No.6 to an extent of Ac.16.29 gts. situated at Pippaldhari village of Adilabad Mandal and District. . The grounds submitted by the Revision Petitioner are under:-

- i) The lower and appellate authorities failed to see that the alleged Tenant by name Dathu ceased to be a tenant in the year 1954-55 itself which was recorded by the then Tahsildar, Adilabad in Procs.No.75322, dt. 7.3.1955. Hence, the question of his continuing in possession of the said land does not arise at all.
- ii) The transfer made by original pattedar Sri Nayeemullah Khan in the year 1967 do not fall under contravention of LTR provisions.
- iii) Both the courts failed to appreciate the fact that from the last 30 years none of the family members of alleged tenant Dattu questioned possession of the petitioners herein and hence resorting to eviction is illegal and arbitrary.
- iv)The lower and appellate authorities failed to see that it is beyond their power to decide rights of protected tenants or inheritance of rights of protected tenants under Sec.40 of AP (T.A) Tenancy Act while contemplating enquiry under LTR Regulation.

2. The brief facts of the case are that the MRO Adilabad furnished report to the Spl. Dy. Collector(TW) Utnoor that the non-tribals viz., 1) Sri Kemi Raja Reddy S/o Ashanna, 2) Kemi Ashanna S/o Rajanna and 3) Kemi Linganna S/o Rajanna were in possession of lands in contravention of provisions of the LTR Act at Pippaldhari, a scheduled village. Accordingly, the Spl. Dy. Collector(TW) Utnoor booked LTR cases vide Nos.A2/873/96, A2/874/96, A2/875/96, conducted enquiry and passed common order on 15.4.1997 with the following findings:

- (a) As per the particulars furnished by the MRO Adilabad, one Dathu S/o Yeshwanth was the pattedar of land admeasuring Ac.16.38 in Sy.No.6 situated at Pippaldhari village of Adilabad Mandal and the above (3) non-tribals are in actual possession of the land by virtue of purchase.
- (b) One Mohd. Naimullah Khan sold an extent of Ac.13.38 to Maneri Lasmanna and Maneri Shankar both sons of Gangaram for a consideration of Rs.5,000/- through registered document No.9/67 on 5.1.1967. The present occupiers did not purchase the land from the pattedar Dathu. They failed to prove that Naimullah Khan was the rightful owner of the suit land at the time of selling and also their relationship with Maneri Lasmanna and Maneri Shankar as their own family members or relatives to prove their rightful possession.

3. Aggrieved by the orders of Spl. Dy. Collector(TW), the petitioners filed Appeal before the Agent to Govt. & Project Officer, ITDA, Utnoor, Adilabad. The Addl. Agent to Govt. & Project Officer ITDA, Utnoor heard the case in file No. A4/05/1997 and passed orders on 29.7.2006 dismissing the case with the following findings:

- i) Appellants Kemi Raja Reddy and Smt. Janaki Bai were present during final hearing and stated that the scheduled land was purchased by his forefather by Registered Sale Document from the original pattedar in the year 1967 and since then their family was in continuous possession. RW1 i.e. Dathu was a protected tenant and he was removed from the land (Bedakhala) as per earlier Tahsildar order.
- ii) However, as per Pahani Abstract for the years 1968-69, 1969-70, 1970-71 and 1990-91, the name of Dathu as entered as Pattedar. Notices were issued for his attendance but his son responded to the final notice, attended on 22.6.2005 and filed application claiming the land as his father was expired.
- iii) The pahani of 1954-55 confirmed PT rights of respondent Dathu. Thus the subsequent registered sale deed on 5.1.1967 between the original owner i.e. Nayeemulla Khan and the then purchasers Maneri Shankar and Maneri Lasmanna had no legality. Even if the contention of the Appellants about "Bedhakal or canceling the PT rights of respondent Dathu subsequently by Tahsildar were to be believed, no right would accrue to the original owner Nayeemulla Khan and he could not have legally executed the registered sale deed without suppressing all these facts and the registered sale deed was of no evidentiary value. There was another sale deed dt.21.2.1980 transacted between the respondent Dathu as the seller and the Appellants as purchasers.
- iv) All the transactions were held in clear violation of LT Regulations which the Appellants failed to establish.

4. Aggrieved by the orders of Addl. Agent to Govt. & Project Officer, ITDA Utnoor, the petitioners filed Revision Petition before the Government.

5. In the reference 2nd read above the Project Officer, ITDA, Utnoor, Adilabad requested to furnish parawise remarks and case records the same were received vide reference 3rd read above. After examination of the parawise remarks and case records, notices were sent to the concerned to attend the hearing of the revision petition on 23-8-2007 and finally called on 31-12-2008 vide reference 4th read above. The Counsel for petitioner was present and submitted written arguments with supporting documents. The gist of arguments made by counsel for petitioners is –

- i) The land measuring Acs.16.38 in Sy.No.6 at Pippaldhari village of Adilabad Mandal and Dist. was purchased by their forefathers late M.Lasmanna and late M.Shankar from Sri Mohd. Nayeemullah Khan through registered sale deed dt.5.1.1967. Since then the land is in their occupation. This sale transaction was mutated in the year 1967 itself in revenue records. In the year 1980, the petitioners herein got rights over the said land in their family partition.
- ii) According to both the authorities, Dattu was the protected tenant of the land and Naimullah Khan had no right to alienate the said land. But the said Dattu or his legal heirs were not at all examined by Spl. Dy. Collector(TW) to verify the real facts. But son of Dattu appeared before the Addl. Agent to Govt. and claimed for land. Dattu did not file any petition before any competent court of law claiming rights over the land during his life time when he was protected tenant and got right over the land. Hence, in the absence of any protected tenancy certificate or any other document concluding that the said Dattu was the owner of suit land, is itself illegal.
- iii) In fact Dattu was tenant of suit land but was not declared as protected tenant. The then Tahsildar, Adilabad through proceedings dt.7.3.1955 vide certificate No.75332 declared that Dattu was not protected tenant. His rights over the said lands as tenant were cancelled in the year 1955 itself and then the original pattedar Nayeemullah Khan sold the land to Lasmanna and Shankar in the year 1967 i.e. before the amended Act 1/70 came into force and thus not contravened the LTR provisions.

- iv) It is now settled law that the mere entries in revenue records does not confirm any legal right and just by finding the wrong entries in revenue records, the Spl. Dy. Collector (TW) initiated LTR proceedings.
- v) No sale agreement was executed on 21.2.1980 by the petitioners and no such discussion was made about the said sale before the Spl. Dy. Collector(TW).
- vi) Both M.Lasmanna and M.Shankar are own brothers and they jointly purchased the suit land on 5.1.1967 through registered sale deed from Sri Mohd. Nayeemullah Khan. Smt.Janakibai, petitioner No.3 herein is the daughter of late M.Lasmanna and her husband name is late Keme Linganna. Smt.Rukumbai is the daughter of late M.Shankar and her husband name is Kemi Ashanna and son's name is Kemi Raja Reddy, the petitioners No.1 & 2 herein. Late M.Lasmanna and late M.Shankar had no male children and as such after their demise, their daughters got rights over the suit land and in a family arrangement, this land went to Janakibai, Kemi Ashanan and Kemi Raja Reddy. The certificates issued by the MRO Adilabad on 16.10.1996 and Gram Panchayat Secretary, Wanwat, on 29.5.2006 confirm this.
- vii)According to section 2 (g) of APSALTR, "Testamentary disposition" is not transfer and shall not attract for initiation of ejectment proceedings under APSALTR.
- viii) Both the authorities took a finding that Naimullah Khan had no right to sell the suit land in the year 1967. The Full Bench of the Hon'ble High Court of AP in G.Narsa Reddy and others held that the regulation has no retrospective effect and the authorities under said regulation have no jurisdiction to pass orders in relation to the immovable property covered by such transfers. It was further decided in this judgement that authorities cannot determine whether protection under T.P.Act is available in absence of certificate under Tenancy Act (Reported in AIR 1982 page 1, AP High Court FB). The present revision is squarely covered with the said Judgement.

Hence, prayed to set aside the impugned order of Addl. Agent to Govt. & Project Officer ITDA, Utnoor and allow the Revision.

6. Government after careful examination of the case record of lower court, grounds urged in the Revision Petition, written arguments submitted by the Counsel for petitioner and other documentary material available on file observed that ---

- a) The basic point that arose for examination in the case is that whether Dattu was declared as protected tenant in the year 1954-55 and if so the subsequent Bedhakal by the Tahsildar, Adilabad would restore ownership to the original pattedar Nayeemullah Khan?
- b) As seen from pahani of 1954-55, the name of original pattedar Nayeemullah was found in pattedar column while name of Dathu S/o Yeshwanthrao was found in cultivator as purchased for Rs.9,000/- and tenant. Merely basing on this, the Addl. Agent to Govt. & Project Officer ITDA Utnoor arrived at a conclusion that he was protected tenant from that year itself without any PT certificate. Moreover, it is found that the said Dattu never objected to the possession and enjoyment by the petitioners and their fore-fathers nor attended before the lower and appellate courts. To the final notice issued on 19.4.2005, his son appeared before the Addl. Agent on 22.6.2005 and did not submit any evidence of his father owning the land but requested to give possession.
- c) It is evident from the certificate of Tahsildar, Adilabad in file No.A3/24536, dt. 3.5.1960 that Dattu had been terminated from Protected Tenancy u/sec.32 sub-sec.2 of AP Tenancy Act, 1950 due to non-payment of rent. The Tahsildar, Adilabad had also addressed the Revenue Divisional Officer, Adilabad in Rc.No.A3/184/1/66, dt. 12.2.1966 that Dattu had been terminated from PT because was he was residing and living in Balapur village of Circle Jainath and other persons were cultivating the land. In his opinion, the land was sublet for a long period to other persons. The Tahsildar, Adilabad also reported that the Village Patwari directly made Dattu as Pattedar without taking approval of

Tahsildar in the Faisal Patti (Mutation). Thus, after termination of PT rights of Dattu, the original pattedar Sri Nayeemullah Khan was restored ownership and possession but the revenue authorities failed to make necessary entries to that effect in the pahanies and continued Dattu as tenant for which there is no documentary evidence except pahani entry made by them in 1954-55. Hence, the transaction between the original pattedar Mohd.Nayeemullah Khan and Maneri Lasmanna and Maneri Shankar through registered sale deed No.9/67, dt. 5.1.1967 is valid. As the purchasers Maneri Lasmanna and Maneri Shankar had no male children, the subsequent devolution to the petitioners as certified by the Tahsildar, Adilabad on 16.10.1996 and the GP Secretary, Wanwat on 29.5.2006 is also valid as per Sec. 2 (g) of APSALTR 1/59 as amended by 1/70. In the circumstances, the agreement dt.21.2.1980 said to be executed by Dattu has no legal validity.

7. Therefore, Government hereby set aside the orders of the Addl. Agent to Govt. & Project Officer ITDA, Utnoor in procs.No.A4/5/1997, dated 29.7.2006 confirming in common order of Spl. Dy. Collector(TW) Utnoor dt.15.4.1997 in case Nos. A2/873/96, A2/874/96 and A2/875/96, and allowed the Revision Petition accordingly.

8. The counsel for the petitioner is requested to inform his clients accordingly. The Addl .Agent to Government and Project Officer, I.T.D.A., Utnoor is requested to take necessary action in the matter.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

A.K.TIGIDI,
PRL.SECRETARY TO GOVERNMENT

To

The Addl. Agent to Government & Project Officer, ITDA,
Utnoor, Adilabad

(RPAD With the records bearing

i) LTR Case file No.TWA2/344/2006,
containing pages CF(64) and NF 4 pages

ii)Agent to Gov t. Utnoor case No.A4/05/1997

The Spl.Dy.Collector,(TW) Utnoor, Adilabad District.

Sri Kemi Raja Reddy S/o Ashanna

Sri Kemi Rajanna S/o late Ashanna

Smt.Kemi Janaki Bai W/o late Linganna

(R/o Mamidiguda Village, Adilabad District)

Sri Dattu S/o Yeshwanth

R/o Tosham, Adilabad Dist.

Sri T.V.Rama Rao, Advocate,

Flat No. 3-3-74/1E, Pulla Reddy Royal Apartments,
Kuthbiguda, Hyd.27.

Copy to the P.S. to M (TW & RIAD)

SF/SCs.

FORWARDED:BY ORDER

SECTION OFFICER